IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.4570 OF 2004

Municipal Corporation of the
City of Pune ...Petitioner
Vs.
Mansukhlal Dagdulal Baldota ...Respondent

Shri R.S. Khadapkar for the Petitioner.
Shri A.P. Varanse for the Respondent.

CORAM : A.S.OKA, J.
DATE : JANUARY 27, 2006.

P.C.:

1. Rule. Shri Varanse waives service for the Respondent. Taken up for hearing forthwith. The Respondent preferred an Appeal under section 406 of the Bombay Provincial Municipal Corporations Act, 1949. The said Appeal was allowed. Being aggrieved by the said decision, the Petitioner preferred an Appeal under section 411 of the said Act of 1949 before the District Court. There was a delay of seventy-two days in preferring the Appeal and therefore, Application for condonation of delay was taken out by the Petitioner and by order impugned dated 07th December, 2001, the Application for condonation of delay has been rejected.

2. The learned Advocate appearing for the Petitioner submitted that the delay was only of seventy-two days which was adequately explained. He submitted that a liberal approach ought to have been adopted by the learned Additional District Judge.

3. I have considered the submissions. Perusal of the Application for condonation of delay shows that the papers of the case were forwarded to the Senior Legal Advisor who submitted his opinion that the case is worth preferring an Appeal. The concerned Department forwarded the papers to the Municipal Commissioner for his sanction. After getting the sanction, the papers were forwarded to the Assessor and Collector of the Tax Department with a recommendation to prefer an Appeal. Due to over-burden of work in the office of Assessor and Collector, the Appeal could not be preferred within the stipulated period of limitation. In my view, there was sufficient explanation for delay of seventy-two days. It is well settled that while considering the Application for condonation of delay under section 5 of the Limitation Act, 1963, the Court should be liberal. In this case sufficient cause was certainly established by the Petitioner. The prejudice which will be caused to the Respondent can be compensated by ordering the payment of costs.

4. Hence, the following order:

: O R D E R :

i) The impugned Judgment and Order dated 07th

December, 2001 is quashed and set aside subject to condition that the Petitioner will pay costs of Rs.5,000/- to the Respondent within a period of six weeks from today. Deposit of the amount of costs in the District Court within the stipulated time will be treated as sufficient compliance with this order.

ii) If the requisite compliance is made by paying and/ or depositing the amount of costs, the Misc. Application No.885 of 2005 will stand allowed and the District Court will proceed with the Appeal in accordance with law.

iii) If amount of costs is neither paid nor deposited within the stipulated period of six weeks, the impugned order will stand.

iv) Rule is made accordingly absolute.

v) Parties and the District Court will act upon an authenticated copy of this order.

JUDGE